IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION PETITION NO.32 OF 2005

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Harish Chandra Gutt & Co.
Pvt.Ltd. ...Petitioner

v/s.

Suresh Gaggar ...Respondent

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Mr.Sham Diwan with Mr.Menon i/b P.G. Pravin for the Petitioner.

Mr.Zal Andhyarujina i/b Ms.Prarthana K., for Respondent.

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CORAM: D.K.DESHMUKH, J.

DATED: 26TH SEPTEMBER,2005

P.C.:

1. By this petition the Petitioner challenges the award made by the Appellate Arbitral Tribunal of the Bombay Stock Exchange dated 15th September, 2004, whereby the award made by the original Arbitral Tribunal dated 11-6-2004 was confirmed and the appeal filed by the Petitioner was dismissed.

2. The Petitioner is the stock-broker. The Respondent is his client. Admittedly, the transactions were of sale and purchase of shares effected by the Petitioner on behalf of the Respondent in December, 1999. According to the Petitioner, an amount of about Rs.21,00,000/- on account of those transactions was due from the Respondent to the Petitioner. Therefore the Respondent, according to the Petitioner, handed over certain shares to the Petitioner as security in the month of January, 2000 and March, 2000. Those shares were sold by the Petitioner between 24-6-2002 and 8-7-2002 for recovering the outstanding amount and reference was made for balance of the amount.

3. Both the arbitral tribunals have held that the claim was barred by the law of limitation. The last transaction was in the month of December, 1999, shares were given in the month of January, 2000 and March, 2000. Both tribunals have disbelieved that the shares were given by the Respondent to the Petitioner as security. They have held that the share were given by the Respondent to the Petitioner for sale to recover his liability.

4. I have heard the learned Counsel for the Petitioner in detail. The Appellate Arbitral Tribunal has, for cogent reasons, held that the case of the Petitioner that the shares were given by the Respondent as security is incapable of being believed, because of the conduct of the Petitioner of transferring the shares in the name of one of the Directors of the Petitioner/company and the wife of the Director. If according to the Petitioner, the nature of the transaction was security, it was for the Petitioner to enter the witness box and explain the nature of the transaction. On the basis of the documents on record and the conduct of the Petitioner, it is clear that the shares were not

handed over by the Respondent to the Petitioner as security. It is common ground that once the case of security is not accepted, the claim of the Petitioner cannot be said to be within the period of limitation. Out of the same transaction the Respondent had made a counter-claim. That counter-claim was rejected by the Arbitral Tribunal as barred by the law of limitation, that award was challenged in Arbitration Petition No.27 of 2005. That petition has been dismissed by this court holding that the counter claim was barred by the law of limitation. As the claim and the counter claim arose out of the same transaction, in my opinion, it cannot be said that the arbitral tribunals have committed any error in holding that the claim of the Petitioner was barred by the law of limitation. Petition, thus, has no substance. It is liable to be dismissed. Accordingly, the Petition is dismissed. No order as to costs.

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